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ATTORNEYS FOR ARABELLA EXPLORATION, INC, A CAYMAN
CORPORATION

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re: § Chapter 11
§
ARABELLA EXPLORATION, LLC, § Case No. 17-40120-mxm-11
§
Debtor.¹ §
§

**SECOND AMENDED MOTION FOR ALLOWANCE OF A SUBSTANTIAL CONTRIBUTION
CLAIM PURSUANT TO SECTION 503(b) OF THE BANKRUPTCY CODE**

TO THE HONORABLE MARK X. MULLIN, UNITED STATES BANKRUPTCY JUDGE:

COMES NOW Arabella Exploration, Inc., a Cayman corporation ("Arabella Exploration") and files this *Second Amended Motion for Allowance of a Substantial Contribution Claim Pursuant to Section 503(b) of the Bankruptcy Code* ("Amended Motion").

I. PARTIES

1. The Debtors in these bankruptcy cases are as follows:

- a. Arabella Exploration, LLC ("AEX"), the Debtor in Case no. 17-40120-mxm-11; and
- b. Arabella Operating, LLC ("AO"), the Debtor in Case no. 17-41479-mxm-11. The two (2) cases have been administratively consolidated under the AEX case.

¹ This case is jointly administered with the case of Arabella Operating, LLC, Case No. 17-41479.

2. Arabella Exploration is the parent company of the Debtors owning a 100% membership interest in each Debtor. As such, Arabella Exploration is an equity security holder in both Debtors. In this Amended Motion, Arabella Exploration seeks the allowance of an administrative claim for a substantial contribution pursuant to section 503(b)(3)(D) of the Bankruptcy Code, including reimbursement to Arabella Exploration for expenses incurred by Arabella Exploration to the following professionals in relation to the activities giving rise to the substantial contribution:

- a. RHSW Caribbean ("RHSW") is a firm located in Grand Cayman, Cayman Islands;
- b. Forshey & Prostok, LLP ("F&P") is a law firm located in Fort Worth, Texas;
- c. Maples and Calder ("Maples Firm") is a law firm located in Grand Cayman, Cayman Islands; and
- d. Solomon Harris ("Solomon Firm") is a law firm located in George Town, Grand Cayman, Cayman Islands.

3. This Amended Motion is supported by the Appendix [Docket No.549] filed on behalf of Arabella Exploration on December 17, 2018. Reference is here made to the Appendix for all purposes.

II. JURISDICTION

4. This Court has jurisdiction over the above bankruptcy cases pursuant to 28 U.S.C, section 1334. This Amended Motion constitutes a "core" proceeding pursuant to 28 U.S.C, section 157(b)(2). The Court has full constitutional authority to enter a final order on this Amended Motion.

III. DEBTORS' PLAN OF REORGANIZATION

5. The Debtors have filed *Debtors' and Platinum Partners Credit Opportunities Master Fund, LP's Joint Plan of Reorganization ("Plan")* [Docket No. 482]. The Debtors, Platinum Partners Credit Opportunities Master Fund, LP ("Platinum Partners") and its wholly

owned subsidiary, Platinum Long Term Growth VIII, LLC ("Platinum VIII"), act as co-proponents of the Plan.

6. On November 27, 2018, the Court entered an Order of Confirmation [Docket No. 531] confirming the Plan. The Effective Date of the Plan was December 26, 2018.

7. Section 2.01 of the Plan addresses Administrative Expense Claims and provides that as to each Allowed Administrative Expense Claim, the holder of such claim shall receive, in full satisfaction of such claim, payment in full in cash on the Effective Date.

8. Section 1.02 of the Plan defines an Administrative Expense Claim to mean "Claim(s) for costs and expenses of administration pursuant to Bankruptcy Code §§ 503(b), 507(a)(2), 507(b) or 1114(e)(2)....". Substantial contribution administrative claims arise pursuant to section 503(b)(3)(D) of the Bankruptcy Code and are granted priority of distribution pursuant to section 507(a) of the Bankruptcy Code. Consequently, a substantial contribution claim pursuant to section 503(b)(3) qualifies as an Administrative Expense Claim pursuant to the terms of the Plan.

9. This Amended Motion is timely filed in accordance with section 2.03(a) of the Plan within twenty (20) days of the Effective Date.

IV. FACTUAL BACKGROUND

A. The Cayman Liquidation

10. Platinum VIII entered into a transaction with Arabella Exploration and the Debtors which included the execution of a Senior Secured Note Agreement dated September 2, 2014, which was secured by two (2) Deeds of Trust respectively filed in Reeves and Ward Counties, Texas (collectively the "Deeds of Trust"), and which cover the oil and gas properties owned by the Debtors (such oil and gas properties being hereinafter collectively referred to as the "Oil and Gas Assets"). Platinum VIII has filed Proof of Claim 18-1 against AEX based upon the above indebtedness asserting a claim in the amount of \$20,061,589.04 secured by collateral having an estimated value of \$40 million. The vast majority of the value of Platinum VIII's collateral is

attributable to the Debtors' Oil and Gas Assets which are subject to the Deeds of Trust.

11. Pursuant to an action commenced by the Securities and Exchange Commission,² a receiver ("Platinum Receiver") has been appointed for Platinum VIII's parent company, Platinum Partners. The original Platinum Receiver, Bart Schwartz, was appointed on December 19, 2016. Later, he was replaced by Melanie Cyganowski on July 6, 2017. Consequently, before December 19, 2016, Platinum VIII dealt with Arabella Exploration and the Debtors. From and after December 19, 2016, Arabella Exploration and the Debtors have dealt with the Platinum Receiver.

12. Both Platinum VIII and the Platinum Receiver viewed the Debtors' Oil and Gas Assets as potentially having substantial value if properly marketed and sold. Consequently, Platinum VIII desired for the Debtors to realize the value of the Oil and Gas Assets by marketing and selling the mineral properties to pay the debt owed to Platinum VIII. However, in order to do so, there were numerous title issues, lien claims, ongoing litigation and other operational issues relating to the Oil and Gas Assets which first had to be resolved, as well as creating a suitable platform to facilitate the sale. The commencement of Chapter 11 bankruptcy cases by the Debtors provided the best solution to these problems.

13. To accomplish this, Platinum VIII needed to take control of the affairs of the Debtors, then initiate bankruptcy cases for them, such that the title and other issues relating to the Oil and Gas Assets could be appropriately resolved and the Oil and Gas Assets could be sold free and clear of liens, claims and interests pursuant to section 363 of the Bankruptcy Code. However, as a condition to doing this, Platinum VIII required the active co-operation of Arabella Exploration as the parent company of the Debtors.

14. Platinum VIII had initially attempted to appoint Mr. Charles L. (Chip) Hoebeke II as the manager of the Debtors. However, the then existing management of Arabella

² *Securities and Exchange Commission v. Platinum Management (NY) LLC, et al.*, Case No. 1:16-cv-06848 in the United States District Court for the Eastern District of New York.

Exploration and the Debtors (being all directors of the entities and collectively referred to as “Management”) refused to acknowledge the validity of Mr. Hoebeke’s appointment as the manager of the Debtors, leaving Platinum VIII to seek another solution.

15. To accomplish its goals, Platinum VIII filed a Winding Up Petition against Arabella Exploration in the Grand Court of the Cayman Islands (“Grand Court”) initiating the following cause (“Cayman Liquidation”):

In the Matter of Arabella Exploration, Inc., Cause FSD72 of 216 (RMJ) before the Grand Court of the Cayman Islands.

The Winding Up Petition was filed on May 27, 2016. A copy of the Winding Up Petition is included as **Exhibit “1”** in the Appendix in support of this Amended Motion. Platinum VIII engaged the services of the Solomon Firm to bring the Winding Up Petition against Arabella Exploration.

16. An order for provisional liquidation (“PL Order”) was entered on June 16, 2016, appointing Christopher Kennedy and Matthew Wright, both directors of RSHW at the time, as joint provisional liquidators (all liquidators appointed by the Grand Court in the Cayman Liquidation are collectively referred to as the “Liquidators”) for Arabella Exploration. A copy of the PL Order is included as **Exhibit “2”** in the Appendix in support of this Amended Motion. Ultimately, on July 7, 2016, the Grand Court gave an order placing Arabella Exploration into official liquidation (“OL Order”). Both Mr. Kennedy and Mr. Wright were confirmed as the joint official liquidators of the Cayman Liquidation. A copy of the OL Order is included as **Exhibit “3”** in the Appendix in support of this Amended Motion. Currently, Martin Trott, also of RSHW, acts as the sole official liquidator of the Cayman Liquidation.

17. As discussed above, Platinum VIII had previously attempted, unsuccessfully, to remove Management. To this end, it was intended by Platinum VIII that, as soon as the PL Order was entered, the Liquidators would remove Management and appoint Mr. Hoebeke as the manager of the Debtors. This was done on June 16, 2016. Mr. Hoebeke used his position as

manager of the Debtors to execute and cause the Debtors' to file petitions in bankruptcy in the pending bankruptcy cases. Without this action by Arabella Exploration, acting through the Liquidators, Mr. Hoebeke would not have been in a position to take control of the Debtors' affairs, thereby allowing the Debtors to file the bankruptcy cases while avoiding further dissipation of the Debtors' assets.

18. In support of the Winding Up Petition, Mr. Hoebeke provided an Affidavit ("Hoebeke Affidavit"), a copy of which is included as **Exhibit "4"** in the Appendix in support of this Amended Motion, but without the voluminous exhibits. The Affidavit states that Platinum VIII had "nominated" Mr. Hoebeke to act as the manager of the Debtors. The Hoebeke Affidavit also explains in detail Platinum VIII's concern that the assets of the Debtors were being dissipated and that the appointment of Mr. Hoebeke as the manager of the Debtors was necessary to avoid further dissipation of the Debtors' assets. This is clearly explained in paragraphs 4 and 5 of the Hoebeke Affidavit which states as follows:

4. *This Affidavit is sworn in support of the ex parte Summons dated 15 June 2016 to appoint joint provisional liquidators on behalf of the Petitioner on grounds that their appointment is necessary to:*

4.1. *Prevent the dissipation or misuse of Arabella Exploration Inc.'s (the "Company") assets which consist of monthly revenue payments to Arabella Operating, LLC which will be received on or about 17 June 2016; and/or*

4.2. *Prevent mismanagement or misconduct on the part of the Company's directors i.e. a failure to act in the best interests of the creditors of the Company by causing the Company to take actions as the owner of the membership interests of the Arabella LLCs (as defined below), which membership interests are the only assets of the Company, which are prejudicial to the value of the Arabella LLCs;*

5. *This Application cannot be made on notice to the Company as the dissipation of Payments could occur on or about Friday 17 June 2016.*

19. The Hoebeke Affidavit also clearly explains that Platinum VIII believed it needed to commence the Cayman Liquidation in order to obtain control over the Debtors. The Hoebeke

Affidavit explains that Platinum VIII had previously attempted to remove Management and appoint Mr. Hoebeke as manager of the Debtors through provisions of the loan documents which provide the basis of Platinum VIII's secured claim in the Debtors. As reflected in paragraphs 6 through 9 of the Hoebeke Affidavit, Jason Hoisager (a member of Management) refused to recognize Mr. Hoebeke as manager and the Debtors' legal counsel, at the time, continued to accept instructions from Mr. Hoisager. Hence, Platinum VIII needed the Cayman Liquidation to install Mr. Hoebeke as manager of the Debtors through the actions of the Liquidators.

20. The PL Order granted the Liquidators the power to "take all such proceedings necessary to include but not limited to voting membership interests in Arabella Exploration, LLC and Arabella Operating, LLC and to any extent required confirming the appointment of Charles Hoebeke of Rehmann". To this end, on June 16, 2016, the Liquidators executed an engagement letter with Mr. Hoebeke's firm, Rehmann, a copy of which is included as **Exhibit "5"** in the Appendix in support of this Amended Motion.

21. In addition, the Liquidators entered into a Protocol with Mr. Hoebeke regarding the operation of the Debtors and appropriate interactions between the Liquidators, on behalf of Arabella Exploration, and Mr. Hoebeke on behalf of the Debtors. A copy of this Protocol is included as **Exhibit "6"** in the Appendix in support of this Amended Motion. Among other things, the Protocol granted Mr. Hoebeke the power to carry-out the day-to-day operations of the Debtors while providing daily updates to the Liquidators.

22. Following the issuance of the PL Order on June 16, 2016, Management wrote to the Liquidators to inform them of their resignations. Copies of these resignation letters are included as **Exhibit "7"** in the Appendix in support of this Amended Motion.

23. Following the final hearing of the Winding Up Petition on July 7, 2016, Arabella Exploration, the OL Order confirmed the continued engagement of Mr. Hoebeke as the manager of the Debtors and his powers after the conclusion of the provisional liquidation period.

B. The Arabella Petroleum Adversary Proceeding

24. Another major incentive for Platinum VIII to commence the Cayman Liquidation was to protect the Debtors and the Oil and Gas Assets from the hostile claims asserted by the bankruptcy trustee of an affiliated company, Arabella Petroleum Company, LLC (“APC”). Both the Debtors and APC were affiliated with Mr. Hoisager who acted in a managerial capacity for both the Debtors and APC. On July 10, 2015, APC filed a Chapter 11 petition as cause number 15-70098-rbk-11 in the Western District of Texas. Morris D. Weiss was thereafter appointed as the Chapter 11 Trustee for APC (“APC Trustee”). The Statement of Financial Affairs [Docket No. 92 of APC’s case] filed by APC in its bankruptcy case reflects Mr. Hoisager as the manager of APC and owner of 100% membership interest in APC.

25. Prior to commencing the Cayman Liquidation, the APC Trustee had already brought suit against the Debtors asserting claims to the Oil and Gas Assets. On February 29, 2016, the APC Trustee filed an adversary complaint (Adv. No. 16-07002) (“APC Adversary”) which included claims against the Debtors arising out of a series of alleged transfers from 2011 through 2015 of assets and cash by APC, including transfers of the Oil and Gas Assets to AEX. The APC Adversary includes claims by the APC bankruptcy estate to the Oil and Gas Assets. Under the circumstances, Platinum VIII was concerned that Mr. Hoisager and the Debtors’ management could not adequately defend the APC Adversary or adequately protect the Debtors’ interests in the Oil and Gas Assets. Moreover, the filing of bankruptcy petitions by the Debtors would stay the APC Trustee’s prosecution of the APC Adversary.

26. On March 28, 2017, Mr. Hoebeke, on behalf of the Debtors, entered into a settlement agreement with the APC Trustee (“Settlement Agreement”) in relation to the APC Adversary. As a condition of the Settlement Agreement the Liquidators were required to execute an addendum and subsequently have the Settlement Agreement and the addendum sanctioned by the Grand Court. The Grand Court sanctioned the Settlement Agreement and

the addendum on May 9, 2017, and a copy of the order is included as **Exhibit “8”** in the Appendix in support of this Amended Motion.

C. The Debtors’ Bankruptcy Cases

27. AEX’s bankruptcy case was commenced on January 8, 2017. AO’s bankruptcy case was filed on April 4, 2017. Both petitions were executed by Mr. Hoebeke as the manager of each of the Debtors. Mr. Hoebeke’s power to do so was derived from the actions of Arabella Exploration, acting through the Liquidators, to remove Management and appoint Mr. Hoebeke. Ultimately, the commencement of the bankruptcies allowed Mr. Hoebeke to sell the Oil and Gas Assets, free and clear pursuant to section 363 of the Bankruptcy Code, on behalf of Platinum VIII and the Platinum Receiver.

D. Arabella Exploration’s Chapter 15 Case

28. Based upon consultations among Platinum VIII, the Platinum Receiver, Mr. Hoebeke, the Maples Firm and F&P, it was agreed that it would be of benefit to the Debtors if Chapter 15 recognition of the Cayman Liquidation was sought in the United States. F&P was requested to act as United States counsel for Arabella Exploration to represent the Liquidators in filing a Chapter 15 case in the bankruptcy court in Fort Worth, Texas. The Platinum Receiver believed that the filing of such a case was necessary to protect and facilitate the Debtors’ Chapter 11 filings in the Fort Worth Division of the Northern District of Texas.

29. There were two main reasons to commence the Chapter 15 case. The first was to protect the Debtors from hostile claims by the APC Trustee in the APC Adversary. Under the circumstances, the Platinum Receiver was concerned that the APC Trustee would seek to substantively consolidate the Debtors’ bankruptcy cases into the earlier filed APC bankruptcy case pending in the Western District of Texas or seek to transfer the Debtors’ bankruptcy cases to the Western District of Texas. The Platinum Receiver was vigorously opposed to any such consolidation or transfer of the Debtors’ cases and viewed that either event would greatly dilute the recovery available to Platinum VIII. The Platinum Receiver believed that, if Arabella

Exploration (as the parent company of the Debtors) had a Chapter 15 case pending in the Northern District of Texas, it would make it more difficult for the APC Trustee to seek to consolidate the cases or to transfer the Debtors' cases to the Western District of Texas.

30. Second, to file the Chapter 15 case was to prevent any interference with the Debtors' cases by Management. The Platinum Receiver wanted to ensure that Management would not interfere with the Debtors' bankruptcy cases or play games with corporate records by claiming that they belonged to Arabella Exploration and not the Debtors. This was important as Management had in the past demonstrated its unwillingness to cooperate with Platinum VIII as set out in the Hoebeke Affidavit. The Platinum Receiver wanted a platform in the Northern District of Texas to protect the interests of the Debtors and the value of the Oil and Gas Assets using the Cayman Liquidation to prevent Management from interfering with or obstructing the process.

31. In sum, the Platinum Receiver wanted to use all the protections afforded through the Cayman Liquidation to benefit and protect the Debtors' Chapter 11 cases and ensure that Mr. Hoebeke remained in control of the Debtors and their reorganization cases. Consequently, the Chapter 15 case was filed on January 8, 2017 and is styled as follows:

*In re: Arabella Exploration, Inc., a Cayman Islands corporation,
Case No. 17-40119-mxm-15, United States Bankruptcy Court,
Northern District of Texas, Fort Worth Division*

32. The Order granting the Chapter 15 petition was entered on May 3, 2017. A copy of this Order is included as **Exhibit "9"** in the Appendix in support of this Amended Motion. The Chapter 15 case remains pending before this Court.

33. Pursuant to an Order [Docket No. 63], the Court in the Chapter 15 case has approved fees and expenses to F&P of \$133,344.05 as an interim award for the period of June 20, 2016 through July 31, 2017. F&P has not yet sought an award for any fees or expenses from and after August 1, 2017.

V. CAYMAN LIQUIDATION FEES AND COSTS

34. In accordance with the Cayman Islands Companies Winding Up Rules 2018 (“CWR”), Order 20 rule 1(f), Arabella Exploration is obligated to compensate RHSW for fees and all reasonable out of pocket expenses incurred in the Cayman Liquidation.

35. Following the sanction of the Winding Up Petition, the Liquidators owed various statutory duties pursuant to the provisions of the CWR. These statutory duties are not dissimilar from those placed on a trustee in Chapter 7 under the U.S. Bankruptcy Code. Examples of these duties include giving notice and responding to the queries of creditors, holding creditors meetings at least once every twelve (12) months, reporting to the Grand Court and creditors at least once every twelve (12) months, assembling the insolvent company’s assets, asserting the claims on behalf of the company, and distributing the proceeds to creditors.

36. To assist the Liquidators in these functions, the Liquidators retained the Maples Firm which has acted as counsel to the Liquidators throughout the course of the Cayman Liquidation. As a result, Arabella Exploration is also obligated to compensate the Maples Firm for its professional efforts in connection with the Cayman Liquidation, as well as reimbursing it for reasonable out of pocket expenses.

37. The Solomon Firm acted as counsel for Platinum VIII in filing the Winding Up Petition. In accordance with CWR, Order 20 rule 1(a), the costs of the petitioner are considered a priority expense of the Cayman Liquidation (that is in priority to both RHSW’s costs and the Maples Firm’s costs). The Solomon Firm incurred fees and costs in relation to the petitioning of the winding up of Arabella Exploration which are currently outstanding.

VI. REQUEST FOR AWARD FOR SUBSTANTIAL CONTRIBUTION

38. Arabella Exploration seeks the allowance of an award for a substantial contribution to the Debtors’ cases pursuant to section 503(b)(3)(D) of the Bankruptcy Code. Arabella Exploration is the owner of a 100% membership interest in both Debtors. As such,

Arabella Exploration qualifies as an equity security holder of both Debtors eligible for relief pursuant to section 503(b)(3)(D).

39. Section 503(b)(4) allows for compensation for professional services rendered by the attorneys and accountants of an entity whose expense claims is allowable under section 502(b)(3)(D).

40. Arabella Exploration seeks the allowance of a substantial contribution award for the expenses incurred by Arabella Exploration in connection with the Cayman Liquidation and the Chapter 15 case. This includes the expenses incurred by Arabella Exploration in relation to the Cayman Liquidation and the Chapter 15 case with regard to RHSW, F&P, the Maples Firm and the Solomon Firm, including the following:

a. RHSW	\$241,484.00
b. F&P	\$165,860.12
c. Maples Firm	\$55,450.96
d. Solomon Firm	<u>\$74,161.52</u>
Total:	\$536,956.60

The above reflect reasonable fees and expenses to be paid to Arabella Exploration to provide reimbursement to it for the costs of RHSW, F&P, the Maples Firm and the Solomon Firm.

VII. APPENDIX

41. The Exhibits referenced above are included in the Appendix filed in support of this Amended Motion.

PRAYER FOR RELIEF

ACCORDINGLY, Arabella Exploration respectfully requests that the Court grant this Amended Motion and for all such further relief to which Arabella Exploration may be entitled.

DATED: January 11, 2019.

Respectfully Submitted,

FORSHEY AND PROSTOK, L.L.P.

/s/ J. Robert Forshey

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ATTORNEYS FOR ARABELLA EXPLORATION, INC., A
CAYMAN CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was served via ECF Electronic Notice, where available, and via first class mail or email on the parties listed on the attached service list on the 11th day of January 2019. In addition, the foregoing document was served via email on the parties listed below on the 11th day of January 2019.

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/s/ J. Robert Forshey

J. Robert Forshey

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